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Customer No. 27061
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Patent
Attorney Docket No. GEMS8081.231

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Brau et al.
Serial No. : 10/711,892
Filed : October 12, 2004
For : METHOD AND SYSTEM OF DETERMINING MOTION IN A
REGION-OF-INTEREST DIRECTLY AND INDEPENDENTLY OF
K-SPACE TRAJECTORY
Group Art No. : 3737
Examiner : John Fernando Ramirez

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

I hereby certify that, on the date shown below, this correspondence is being:

- ☐ Mailing
deposited with the US Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450
- ☐ 37 CFR 1.8(a)
with sufficient postage as first class mail
- ☐ 37 CFR 1.10
As "Express Mail Post Office to Addressee" Mailing Label No.

Transmission

- ☒ transmitted by facsimile to Fax No.: 571-273-8300 addressed to Director Fred Schmidt at the Patent and Trademark Office.

Date: 7/30/2008

Signature: [Signature]

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.137(a) REQUESTING
REVIVAL OF AN UNAVOIDABLY ABANDONED APPLICATION**

Dear Sir:

Responsive to the Advisory Action mailed May 30, 2008, and the Notice of Abandonment mailed July 29, 2008, Applicant respectfully requests revival of the unavoidably abandoned application for the reasons set forth below.

07/31/2008 PCHOMP 00000017 10711892

01 FC:1452

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REMARKS**INTRODUCTION:**

The Notice of Abandonment states that Applicant's attorney, undersigned, "confirmed that he didn't file a response to the last office action of 05/30/2008." However, that Office Action was an Advisory Action and was mailed by the PTO after the 6 month period for reply to the Final Office Action mailed September 13, 2007. In fact, undersigned did file a response with an RCE on July 18, 2008. Applicant seeks the withdrawal of the holding of abandonment and revival based on unavoidable delay for the following reasons.

DETAILED RESPONSE:

Applicant timely filed an amendment after-final on November 13, 2007. Since Applicant timely filed the response within two months of the Final Office Action mailed September 13, 2007, Applicant was entitled to a timely Advisory Action. However, the Advisory Action was not mailed until May 30, 2008. Applicant concluded that the application was effectively abandoned as the six-month period for reply actually expired March 13, 2008, regardless of the Examiners mailing of the Advisory Action. Applicant hereby petitions for revival of this application.

As noted above, Applicant filed a timely after-final amendment on November 13, 2007, fully expecting a prompt reply from the Examiner comprising one of an Advisory Action, a new Office Action withdrawing finality, or a Notice of Allowance as required by MPEP §706.07(f)(I) ("[r]eplies after final should be processed and considered promptly by all Office personnel." *MPEP 706.07(f)(I)*). However, after an Examiner reassignment and more than six months after the November 13, 2007 amendment, Applicant did not receive the Advisory Action until two months beyond the six-month period for response.

After reviewing the case history of the application in view of the May 30, 2008 Advisory Action, Applicant became aware of a docketing error in the practitioner's docketing system that resulted in a failure to note and advise the Applicant of the March 13, 2008 six-month deadline for reply to the Examiner's Final Office Action.

Per MPEP 711.03(c): "[a] delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that: (A) the error was the cause of the delay at issue; (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and (C) the employee was

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sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.” *MPEP 711.03(c)*. As will be set forth in detail below, Applicant believes that the delay in responding to the Examiner’s Final Office Action was purely unavoidable in view of the above MPEP definition.

Specifically, the practitioner’s docketing specialist, who was trained and experienced with regard to the practitioner’s docketing routine, inadvertently failed to select the “last date to file” reminder when docketing Applicant’s November 13, 2007 response after final. For reasons unknown to the undersigned, the CTS patent docketing software utilized does not default to provide this reminder, but must be checked for each final office action. It is in fact the firm’s policy to check this reminder for every final office action.

In this particular case however, the “last date to file”, or the six-month date from the Examiner’s Final Office Action, was not brought to the attention of the responsible attorney by the March 13, 2007 date, as is customary in the practitioner’s docketing routine. Thus, as a result of an employee error in the performance of a clerical function, the six-month period for reply was mistakenly overlooked, allowing the subject application to unknowingly go abandoned.

Attached herewith are Exhibits A-D, showing that the entire delay in filing the required reply was unavoidable. Exhibit A shows a screenshot of Applicant’s Office Action docketing page. Note that the “Continue to Show Last Date to File Reminder” box was not checked by the practitioner’s docketing specialist, and thus the last date to file (i.e. the six-month date) was not correctly docketed. Exhibit B shows another screenshot, this screenshot pertaining to Applicant’s main U.S. Patent Case screen for the subject application. When the practitioner’s docketing specialist received reminders regarding the three, four, and five month Respond to Office Action dates, the specialist consulted the USPTO’s PAIR website for updates on the status of the response from the Examiner to the after-final amendment. As no response from the Examiner had been mailed at the five-month mark, the docketing specialist was to wait until the six-month mark to determine if yet another reply to the Final Office Action was necessary. However, since the “Last Date to File” reminder was not checked marking the six-month date for response to the Final Office Action, the practitioner’s docketing specialist was not forewarned of the impending six-month deadline, and thus appropriate action was not taken to avoid abandonment of the application. In an attempt to avoid this scenario from occurring again, the practitioner’s docketing specialist has contacted the docketing software manufacturer to suggest automatic six-month reminders to respond to Office Actions, thus mitigating any human error that may be involved in setting these important reminders.

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Next, Exhibit C is provided to show the docketing specialist's routine when docketing a Response after Final Rejection. At item 1(a), there are instructions to "check '*continue to show last date to file reminder*' on OA screen." Due to inadvertent human error, the docketing specialist erred in failing to follow the instructions set forth in Exhibit C, and thus the reminder for the last date to file a response was not set. Finally, Exhibit D is a signed statement provided by the practitioner's docketing specialist, Gregory V. Madden, setting forth that he is trained and experienced with regard to the function and routine of the docketing process, and, as a former Patent Examiner with the USPTO, is knowledgeable in the deadlines associated with prosecuting patent applications.

Therefore, for at least the reasons set forth above and further in view of Exhibits A-D, Applicant respectfully requests that the petition under 37 C.F.R. 1.137(a) requesting revival of an unavoidably abandoned application be granted, as this application was indeed unavoidably allowed to fall into abandonment.

Further, notwithstanding the aforementioned docketing error contributing to the unavoidable abandonment of the subject application, Applicant also notes that the Office clearly failed to fairly and promptly consider the amendment after-final filed November 13, 2007. Per the MPEP, "[r]epplies after final should be processed and considered promptly by all Office personnel." *MPEP 706.07(f)(1)*. The Examiner(s) did not promptly consider the after-final amendment of November 13, 2007, as Applicant did not receive an Advisory Action until six months after the Final Office Action, at which point the application was already effectively abandoned. Presumably, either the former examiner neglected to timely reply, or, perhaps due to reassignment, the Office erred in its timely calendaring/docketing and/or reassignment of this case. In either instance, the Applicant has fallen victim to an unreasonable delay by the Office, and Office procedure was clearly not followed in responding to the after-final filed November 13, 2007. Thus, despite the undersigned's office's own docketing error, the abandonment at issue would have been avoided had Office policy been adhered to in this case. Undersigned therefore requests that this lapse be given favorable consideration in deciding the outcome of this Petition.

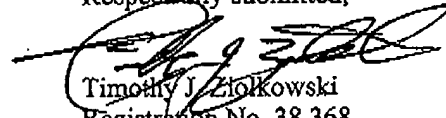
Accordingly, for the reasons set forth above, Applicant respectfully requests granting of this Petition to revive based in an unavoidable delay. A reply in compliance with the requirements of 37 C.F.R. 1.137(a) and the fee set forth in § 1.17(l) are being filed concurrently herewith.

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In order to expedite this Petition and entry of Applicant's RCE, Applicant cordially invites Office personnel to telephone the undersigned for any clarification in order to favorably resolve and grant this Petition.

Respectfully submitted,



Timothy J. Ziolkowski
Registration No. 38,368
Direct Dial 262-268-8181
tjz@zpspatents.com

Dated: 7/30/08
Attorney Docket No.: GEMS8081.231

P.O. ADDRESS:

Ziolkowski Patent Solutions Group, SC
136 South Wisconsin Street
Port Washington, WI 53074
262-268-8100

Serial No. 10/711,892

EXHIBIT A

Office Action (Record locked to allow your updates)
 Record Save References Reminders Electronic Files Forms Help

Docket No. **GEMS8081-231** Country: **USA**

Dates / Response

☐ ex Parte Quale
☐ Restriction Req.
☒ Final
☒ Received Conf.
☒ Response Faxed/Emailed
☒ Date Sent/Abandoned:
 Date Received in Patent Office:

Date Mailed: 9/13/2007
 Date Received: 9/14/2007
 Date Due: 11/13/2007
 Last Date to File: 3/13/2008
 11/13/2007
 11/13/2007

Notes / FlexFields / Advisory Actions

Examiner

Name: John Fernando Ramirez
 Phone:
 Fax: (571) 273-8300
 Art Unit / Office: 3737

Advisory Action

☒ Expected ☒ Received
☐ Continue to Show Last Date to File Reminder

5/30/2008 GVM

Reminder left unchecked; six month date not noted.

EXHIBIT B

Serial No. 10/711,892

U.S. Patent Case (Record Locked to allow your updates)

Record Other Screens Save Contact Forms Help

Case Management

Pri Atty: TJZ Sec Atty: MJL Admin: GVM EFS Filed ☐

Docket No: GEMS8081231 Client: GEMS List

App Serial No: 10/711,892 Filing Date: 10/12/2004

Title: METHOD AND SYSTEM OF DETERMINING MOTION IN A REGION OF INTEREST DIRECTLY

Date Iss/Abn: Patent No: Patent Expiration Date: ☐ Exp Date Adjusted

Cli Doc: 154850MP

Application Type

☐ Provisional ☐ Design

☒ Utility ☐ Plant

☐ PCT 371 ☐ ReExam

☐ Reissue

Status: Pending

Reminder List for this Case

Item	Who	Due Date
4th Month Respond to Office Action - USA	TJZ	1/13/2008
4th Month Respond to Office Action - USA	MJL	1/13/2008
5th Month Respond to Office Action - USA	TJZ	2/13/2008
5th Month Respond to Office Action - USA	MJL	2/13/2008

There are 6 Reminder Items for this Case

Priority Case: ☐ Accelerated Examination

Priority Date:

5/30/2008 EVA

No "Last Date to Respond" reminder set for 3/13/2008

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EXHIBIT C

FINAL Office Actions

Response to Final Office Action

1. Other -> Notes Enter sent dates, check response faxed/emailed, received conf. and advisory action expected (if final and sent b/f 2 mo)
 - a. If filed after 2 mo date, mark 3 mo reminder complete and check "continue to show last date to file reminder" on OA screen
2. Don't set reminders (but don't delete old reminders)
3. Tasks: check if marked complete
4. Office Calendar:
 - a. find and add notes to body "Response filed x/x/x <new ln> Advisory Action expected x/x/x" (this is the one mo out date - in CTS reminder screen)
 - b. or if (or 'FINAL Office Action 4 mo date' if 2 mo date passed b/f filing response)

FINAL O.A. mailed 3/16/06
 2 mo date = 5/16/06
 3 mo date = 6/16/06
 Response filed 6/16/06
 4 mo date = 7/17/06
 5 mo date = 8/16/06
 Last date to file = 9/18/06
 - c. Mark as docketed
 - d. Copy all of bottom text
 - e. New Calendar Item
 - i. Paste text
 - ii. Office Properties tab: enter case # and 'task to do'
 1. 'FINAL Office Action 3 mo date' or
 2. 'FINAL Office Action 4 mo date' if 2 mo date passed w/o filing
 - iii. If [redacted] then change to his color
 - iv. Set Date
 - v. Make 'All day event'

Advisory Action

1. Check 'advisory action received'
2. Notes -> go to next tab, add date mailed
4. Print case history
5. New OC item - Respond to Advisory Action;

in notes - FINAL Office Action mailed x/x/x
 Response filed x/x/x
 Advisory Action mailed x/x/x
 3 (or 4) mo date = x/x/x
6. Assign to atty who did response

Req. for Continued Exam (RCE)

1. Find Final Office Action
 - i. In Notes, add note for date response to final O.A. sent "x/x/x Response filed"
 - ii. Add Note for date RCE filed "6/28/06 RCE and 1 mo EOT"
 - iii. Change date sent and date received to date RCE sent/received
2. Uncheck Continue to show last date to file reminder
3. Select RCE in type of amendment
4. Yes to receive O.A. reminder
5. Get rid of all existing O.A. reminders
6. Mark tasks/calendar
7. Add RCE filed date to main Notes screen

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EXHIBIT D

Patent
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Group Art No. : 3737
Examiner : John Fernando Ramirez

**DECLARATION BY THE PRACTITIONER'S DOCKETING SPECIALIST IN
SUPPORT OF PETITION TO REVIVE ABANDONMENT
UNDER 37 C.F.R. 1.137(a)**

I, Gregory V. Madden, being duly sworn, depose and say that I am an employee of Ziolkowski Patent Solutions Group, SC, patent practitioners for the above-identified Patent Application. My duties as an employee of Ziolkowski Patent Solutions Group, SC include the docketing of all incoming and outgoing correspondence with the United States Patent and Trademark Office. I am sufficiently trained and experienced in the docketing routine and software provided by my employer. Further, as a former Patent Examiner with the USPTO, I am also well versed in the appropriate deadlines for response to various Office communications and Office Actions. However, despite all due care on the part of my employer, a clerical error was made in docketing the Final Office Action mailed September 13, 2007 for the above-referenced Patent Application, wherein I failed to make note of the six-month deadline for reply, as is customary in the practitioner's docketing routine. Specifically, the patent docketing software utilized does not default to provide a six-month deadline reminder, but must be checked for each final office action. It is my employer's policy to in fact check this reminder for every final office action, but I had mistakenly failed to do so in the present application. As such, my docketing error led directly to the Applicant's failure to timely reply to the Final Office Action of September 13, 2007, despite all due care on the part of my employer, Ziolkowski Patent Solutions

EXHIBIT D


INVENTOR: Brau, et al.

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Group, SC. As a result of my error, the above-referenced Patent Application has been abandoned due to the unavoidable delay in responding to the Final Office Action of September 13, 2007.

I swear that the statements made herein are of my own knowledge and are true and made on information and belief that are believed to be true.

I acknowledge that any willful false statements and the like made herein are punishable by fine or imprisonment, or both, and may jeopardize the validity of the application or any patent issuing thereon.


Gregory V. Madden

Dated: 7/30/2008